

FILED  
CLERK OF DISTRICT COURT

RECEIVED

29 AUG 02 PM 2:47

AUG 29 2002

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

OFFICE OF JUDGE  
DAVID SAM

BY:

DEPUTY CLERK

IN RE:

COMMERCIAL EXPLOSIVES  
ANTITRUST LITIGATION

No. 2:96 MD 1093S

No. 2:02-cv-00206

This Document Relates To: All Class  
Actions

Judge David Sam

**ORDER PERMANENTLY ENJOINING SUIT  
AND DISMISSING CLAIMS WITH PREJUDICE**

The matter of Defendants' Joint Motion to Enforce Settlement Agreements and to Dismiss with Prejudice, dated April 11, 2002, and Plaintiffs' Motion to Remand, dated September 18, 2001, came on regularly for hearing before Judge David Sam on August 22, 2002. The parties appearing were represented by counsel as follows:

1. Defendants DYNO NOBEL INC. *f/k/a* IRECO Incorporated, Mountain Explosives Company, and Sandy Valley Explosives Company, Inc. were represented in person by Raymond J. Etcheverry and David M. Bennion of Parsons Behle & Latimer;

2. Defendant E.I. DuPont de Nemours and Company was represented in person by Scott R. Bauer of Petrie, Bauer, Vriesman & Edgington LLP;

3. Defendants ICI Explosives USA, Inc. *f/k/a* Atlas Powder Company and successor to East Kentucky Explosives, Inc., and Orica USA, Inc. were represented in person by James S. Jardine of Ray Quinney & Nebeker, and via telephone by Lisa Tresslar of Duane, Morris LLP;  
and

1242

4. Plaintiffs Orville L. Hamilton, Doug Hamilton, and Carbon Coal, Inc. (collectively, "the Hamilton Plaintiffs") were represented via telephone by Robert G. Methvin, Jr. of McCallum & Methvin, P.C.

The Court, after hearing oral argument of counsel and full consideration of Defendants' Joint Motion to Enforce Settlement Agreements and to Dismiss with Prejudice, and Plaintiffs' Motion to Remand, as well as the parties' memoranda supporting and opposing the same, and having reviewed the file in this matter and being otherwise fully advised in the premises, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

1. The Hamilton Plaintiffs are members of the class certified by this Court pursuant to Order for Preliminary Approval of Partial Settlement and Certification of Settlement Class, dated September 13, 1996, and the class certified by this Court pursuant to Order Granting Class Certification, dated April 21, 1997.

2. The Hamilton Plaintiffs' reading of this Court's class certification definitions, orders and the class settlement agreements (as well as the Hamilton's Plaintiffs' attempts to narrowly construe the dates and definitions contained in such orders, releases and agreements) are without merit and are without legal or factual support.

3. The claims asserted by the Hamilton Plaintiffs in their Amended Complaint, as well as any claims arising out of or in any way relating to the operative facts asserted in the Amended Complaint or as represented to the Court in the Hamilton Plaintiffs' briefs in connection with the pending Motions, are within the scope of and are subject to the releases in the class action settlement agreements, and are barred by the Final Consent Judgments

previously entered by the Court in *In re Commercial Explosives Antitrust Litigation*, Case No. 2:96 MD 1093S.

4. Accordingly, the Hamilton Plaintiffs are hereby permanently barred and enjoined from prosecuting their pending action against Defendants and are permanently enjoined from instituting or prosecuting, either directly, representatively, derivatively or in any other capacity, any claims against Defendants arising out of or in any way relating to the operative facts asserted in the Amended Complaint or as represented to the Court in the Hamilton Plaintiffs' briefs in connection with the pending Motions.

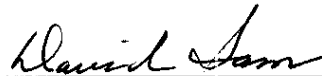
5. Without in any way affecting the permanent injunction stated in the preceding paragraph, to the extent that the Court has removal jurisdiction under the All Writs Act, 28 U.S.C. § 1651, the Court additionally and alternatively finds, based on the case authorities cited in Defendants' memoranda with respect to the pending Motions, which authorities are hereby adopted by the Court, that, pursuant to said removal jurisdiction, and pursuant to the releases contained in the class action settlement agreements, the Hamilton Plaintiffs' action should be, and hereby is, dismissed with prejudice.

6. Defendants' Joint Motion to Enforce Settlement Agreements and to Dismiss with Prejudice is hereby **GRANTED**.

7. The Hamilton Plaintiffs' Motion to Remand is hereby **DENIED**.

DATED this 29<sup>th</sup> day of August, 2002.

BY THE COURT:



Honorable David S. Sam  
U.S. District Court Judge

ce

United States District Court  
for the  
District of Utah  
August 30, 2002

\* \* CERTIFICATE OF SERVICE OF CLERK \* \*

Re: 2:02-cv-00206

True and correct copies of the attached were either mailed or faxed by the clerk to the following:

Justin Ross Morgan, Esq.  
THE MORGAN LAW FIRM  
PO BOX 419  
201 W VINE ST  
LEXINGTON, KY 40588-0419

Robert G. Methvin Jr, Esq.  
MCCALLUM & METHVIN PC  
2201 ARLINGTON AVE S  
BIRMINGHAM, AL 35205

O. Lee Hamilton III, Esq.  
DAVIS HAMILTON BERRY & SEXTON LLC  
PO BOX 240609  
MONTGOMERY, AL 36124-0609

Steven M. Crawford, Esq.  
FROST BROWN & TODD  
400 W MARKET ST  
LOUISVILLE, KY 40202  
JFAX 8,502,5811087

Lisa L. Tresslar, Esq.  
DUANE MORRIS & HECKSCHER  
ONE LIBERTY PL STE 4200  
PHILADELPHIA, PA 19103-7398

James S. Jardine, Esq.  
RAY QUINNEY & NEBEKER  
36 S STATE ST STE 1400  
PO BOX 45385  
SALT LAKE CITY, UT 84145-0385  
JFAX 9,5327543

John D. Preston, Esq.  
PERRY PRESTON & MILLER  
PO BOX 900  
PAINTSVILLE, KY 41240

Donald H. Combs, Esq.

COMBS & COMBS  
PO BOX 31  
411 MAIN ST  
PIKESVILLE, KY 41502-0031

Mr. Raymond J Etcheverry, Esq.  
PARSONS BEHLE & LATIMER  
201 S MAIN ST STE 1800  
PO BOX 45898  
SALT LAKE CITY, UT 84145-0898  
EFAX 9,5366111

Roger L. Massengale, Esq.  
LAW OFFICE OF ROBERT MASSENDALE  
PO BOX 1278  
249 COURT ST  
PAINTSVILLE, KY 41240

Stanton L. Cave, Esq.  
LAW OFFICE OF STANTON L CAVE  
3600 HARRODSBURG RD  
STE 205  
LEXINGTON, KY 40503

R. David Clark, Esq.  
CLARK WARD & CAVE  
401 W MAIN ST  
301 VICTORIAN SQUARE  
LEXINGTON, KY 40507-0550

Scott R. Bauer, Esq.  
PETRIE BAUER & VRIESMAN LLP  
1775 SHERMAN ST STE 2500  
DENVER, CO 80203

Michael J. Beck  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION  
THURGOOD MARSHALL FEDERAL JUDICIARY BLDG  
ONE COLUMBUS CIRCLE NE  
RM G-255 NORTH LOBBY  
WASHINGTON, DC 20002-8004

Joseph Goldberg, Esq.  
FREEDMAN BOYD DANIELS HOLLANDER GUTTMANN & GOLDBERG PA  
20 FIRST PLAZA STE 700  
ALBUQUERQUE, NM 87102